

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2019-07ST
November 8, 2019

NOTICE: Under [IC 4-22-7-7](#), this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the department's official position concerning a specific issue.

ISSUES

Sales and Use Tax - Applicability of Medical Exemption to Implanted Pain Management System

Authority: [IC 6-2.5-1-23](#); [IC 6-2.5-1-25](#); [IC 6-2.5-2-1](#); [IC 6-2.5-5-8](#); [IC 6-2.5-5-18](#); [45 IAC 2.2-5-27](#); *Indiana Dep't of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Indiana Dept. of State Revenue v. Kimball Int'l Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988).

A taxpayer ("Company") is seeking a determination regarding the following issues:

1. Are sales of the Company's implant exempt from sales tax under the provisions of [IC 6-2.5-5-18](#), related to medical equipment, supplies and devices?
2. Are sales of the Company's implant exempt from sales tax under the provisions of [IC 6-2.5-5-8](#), related to property acquired for resale, rental, or leasing in course of business?

STATEMENT OF FACTS

Company is based outside of Indiana. Company manufactures and sells various medical devices. Company provides the following relevant, factual context regarding its permanently implanted chronic pain management system (the "Implant"), which consists of the Implant itself, its wireless controller, and a charger. Company's request, reproduced exactly as submitted in its request for a ruling with certain details redacted, is as follows:

The [Implant] is an FDA-approved Class III Medical Device that is surgically installed on a person's spinal cord for purposes of preventing chronic pain in areas below the implant. The [Implant] is designed to be a long-term and permanent solution for persons who have permanent chronic pain due to an injury or other disorder. The [Implant] system not only inhibits pain but also effectively allows the user to move more freely and use their affected musculoskeletal areas in a way that is not possible without the implant. Once installed, the implant is not intended to be removed. The [Implant] inhibits pain by emitting [an] electrical pulse within the spinal cord and interrupting pain receptors. The device must be prescribed by a medical doctor, ordered individually for a specific patient, and implanted by a surgeon.

The [Implant] consists of three pieces: the battery, the anchor, and the leads all of which are surgically attached to the patient. The implant is controlled by the patient through a wireless remote controller that comes with the product. The wireless remote is designed specifically for use with the [Implant] and has no other functionality or purpose. The [Implant] system includes a battery charger and cable that are designed specifically for use with the [Implant] and have no other functionality or purpose. Each component serves as a piece of a functionally indivisible unit.

The [Implant] system is sold to hospitals, licensed physicians and health facilities who diagnose the patient's ailment, prescribe, dispense and surgically install the [Implant]. [Company] does not sell or dispense the [Implant] system directly to patients.

DISCUSSION

Company requests that the Department find that the Implant is exempt from Indiana gross retail tax as either a prosthetic device pursuant to [IC 6-2.5-5-18\(c\)](#) or as a sale for resale under [IC 6-2.5-5-8](#).

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. [IC 6-2.5-2-1\(a\)](#). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. [IC 6-2.5-2-1\(b\)](#). In general, all purchases of tangible personal property are subject to sales and/or use tax unless an enumerated exemption from sales and/or use tax is available. [IC 6-2.5-](#)

[5-18\(c\)](#) provides an exemption for certain medical devices and equipment in pertinent part:

Transactions involving the following are exempt from the state gross retail tax if the end user acquires the property upon a prescription or drug order (as defined in [IC 16-42-19-3](#)) from a licensed practitioner:

- ...
- (3) Prosthetic devices, including artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, and contact lenses.
- (4) Other medical supplies or devices that are used exclusively for medical treatment of a medically diagnosed condition, including a medically diagnosed condition due to:
 - (A) injury;
 - (B) bodily dysfunction; or
 - (C) surgery.

Company considers the Implant to meet the definition of a "prosthetic device," which is defined in [IC 6-2.5-1-25](#) as follows:

"Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for the device, worn on or in the body to:

- (1) artificially replace a missing part of the body;
- (2) prevent or correct physical deformity or malfunction; or
- (3) support a weak or deformed part of the body.

Company believes that the Implant system is a prosthetic device because it uses electrical stimulation to facilitate the user's mobility and support body parts that have been diagnosed as sufficiently weakened to necessitate such a device. While the Implant itself might be considered a prosthetic device, the Implant system as a whole does not appear to meet the definition of a "prosthetic device" because the wireless remote and battery charger are not worn in or on the body.

Regardless, Company acknowledges that the exemption at [IC 6-2.5-5-18](#) also requires that prosthetic devices (or other medical equipment and devices listed in the statute) be prescribed by a licensed practitioner to the end user purchaser in order for the transaction to qualify for the exemption. A "prescription" is defined by [IC 6-2.5-1-23](#) as "an order, a formula, or a recipe issued in any form of oral, written, electronic, or other means of transmission by a licensed practitioner authorized by Indiana law." The Department's regulations at [45 IAC 2.2-5-27](#) further clarifies the definition of "prescribed" as follows:

- (a) The term "person licensed to issue a prescription" shall include only those persons licensed or registered to fit and/or dispense such devices.
- (b) Definition: The term "prescribed" shall mean the issuance by a person described in [subsection (a)] of a certification in writing that the use of the medical equipment[,] supplies[,] and devices is necessary to the purchaser in order to correct or to alleviate a condition brought about by injury to, malfunction of, or removal of a portion of the purchaser's body.

Company confirms that its products are actually purchased by hospitals, licensed physicians, and health facilities who diagnose patients who could benefit, and ultimately use, the Implant system. Company concludes that because Indiana's provisions related to the exemption of medical equipment and devices from sales tax require that such property be purchased by the end user of the device, which is not the case for the Implant system, the Implant system is not exempt pursuant to [IC 6-2.5-5-18](#). The department agrees with Company's conclusion. The department has consistently held that doctors, hospitals, and other medical offices and professionals are not eligible to purchase medical devices and equipment exempt pursuant [IC 6-2.5-5-18](#).¹ [IC 6-2.5-5-18](#) requires a prescription from a licensed practitioner issued directly to a specific end user purchaser. Therefore, the purchase of the Implant could not be exempt under [IC 6-2.5-5-18](#) if it is not sold directly to the end user patient by Company or a licensed practitioner.²

However, turning to the second issue, Company believes that the product may be exempt under [IC 6-2.5-5-8\(b\)](#), which provides:

Transactions involving tangible personal property other than a new motor vehicle are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

Company asserts that the doctors and medical professionals that prescribe and implant the Implant system do not

materially alter it between receipt from Company and activation for the benefit of the patient. Every patient that pays for their specific Implant system makes a payment to their medical professional either directly or via their insurance provider. At no point does Company receive payment from the end users of the Implant system or their insurance. Company's economic transaction is completed upon receipt of payment from the medical professionals who prescribe and implant the Implant system. As such, the department concludes that the transaction between Company and the medical professionals that prescribe the Implant system to their patients constitutes a sale for resale. Therefore, when Company sells the Implant to a hospital, doctor's office, or medical professional, and the Implant is subsequently sold to an end user patient, then the Implant would be exempt from sales tax when sold to the hospital, doctor's office, or medical professional under [IC 6-2.5-5-8\(b\)](#). The Taxpayer shall require the hospital, doctor's office, or medical professional purchasing the Implant to provide a valid exemption certificate (Form ST-105) at the time of purchase in order to qualify for this "sale for resale" exemption.

RULING

Company's Implant system (the implant itself, the wireless remotes, and the battery charger) would not be considered a prosthetic device, and furthermore is not eligible for the exemption under [IC 6-2.5-5-18](#) because the Implant system is not sold to the end user patient. However, Company's Implant system is instead eligible for the sale for resale exemption under [IC 6-2.5-5-8](#) because they are sold to hospitals, licensed physicians, and health facilities that subsequently resell the Implant system to end user patients.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances as stated herein are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

¹ See Revenue Ruling # 2016-01ST ([20160831-IR-045160366NRA](#)); Revenue Ruling # 2015-16ST ([20160330-IR-045160125NRA](#))

² For this reason, the general category of "other medical supplies or devices" under [IC 6-2.5-5-18\(c\)\(4\)](#) would not be applicable, even if the three components met the description within this subsection.

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